

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MATTHEW N. FULTON,

Plaintiff,

v.

ENCLARITY, INC., et al.,

Defendants.

Case No. 16-13777

Honorable Denise Page Hood

ORDER DENYING WITHOUT PREJUDICE
MOTION TO CERTIFY CLASS

On October 24, 2016, Plaintiff filed the instant class action complaint against various Defendants, along with a Motion to Certify the Class. Defendants have yet to be served and no scheduling order has yet been entered in this case.

Although Rule 23 of the Rules of Civil Procedure provides that a class certification shall be decided as soon as practicable after the commencement of an action, “this does not mandate precipitate action. The court should defer decision on certification pending discovery if the existing record is inadequate for resolving the relevant issues.” *In re Am. Medical Systems, et al.*, 75 F.3d 1069, 1086 (6th Cir. 1996). Other than the Complaint and exhibits thereto, there is no record before the Court. The Supreme Court requires district courts to conduct a “rigorous analysis” into whether the prerequisites of Rule 23 are met before certifying a class. *General Tel.*

Co. v. Falcon, 457 U.S. 147, 161 (1982). A class is not maintainable as a class action by virtue of its designation as such in the pleadings. *In re Am. Medical*, 75 F.3d at 1079. A defendant has due process rights in an action, including an opportunity to respond to the complaint, to conduct any discovery on any of the named plaintiffs or submit a brief to the district court regarding class certification issues. *Id.* at 1086.

In this case, as noted above, Defendants have not been served. Defendants have not filed a response to the Complaint, nor had an opportunity to determine whether discovery is required on the class certification issue. The Court at this time cannot make the “rigorous analysis” required to determine whether Plaintiff meets class certification requirements.

Accordingly,

IT IS ORDERED that Plaintiff’s Motion to Certify Class (**Doc. No. 2**) is DENIED without prejudice. Plaintiff may refile its motion after Defendants have been served and had the opportunity to respond to the Complaint and the class allegations.

S/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: November 8, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 8, 2016, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager